

6/12/07

IN THE CIRCUIT COURT OF MONONGALIA COUNTY WEST VIRGINIA
DIVISION NO. 1

HOWARD J. TRICKETT, et. al.,

Plaintiffs,

v.

CIVIL ACTION NO. 91-C-615

JOSEPH A. LAURITA, JR. et. al.,

Defendants,

and,

J. ANTHONY & COMPANY, et. al.,

Plaintiffs,

v.

CIVIL ACTION NO. 90-C-205

JAMES TRICKETT, et. al.,

Defendants.

**ORDER DENYING GIANOLA, BARNUM, & WIGAL L.C., PATRICK C. MCGINLEY,
AND ROBERT J. SHOSTAK'S MOTION FOR RECONSIDERATION AND TO AMEND
THE COURT'S FEBRUARY 18, 2004 ORDER**

On February 27, 2004, Gianola, Wigal, & Barnum, L.C., Patrick C. McGinley, and Robert J. Shostak filed a Motion for Reconsideration and to Amend the Court's February 18, 2004 Order Enforcing Settlement, Releasing Defendants, and Dismissing Civil Actions. In their motion, they ask the Court to take notice of their Petition for Quantum Meruit Attorney Fees and Attorney's Lien filed July 17, 2002 and September 18, 2003, respectively. Allen, Guthrie, McHugh, & Thomas filed its Response to Gianola, Barnum, & Wigal's Petition for Attorney Fees on April 7, 2004. A hearing on said motions was held on April 12, 2004. The parties then filed memoranda of law on May 13, 2004 and June 2, 2004 in support of their respective

positions, after which the matter was submitted to the Court for a decision. The Court has reviewed these motions, considered all pleadings of record, heard the arguments of counsel, and reviewed pertinent legal authorities. For the reasons set forth in the following Opinion, the Court DENIES the Motion for Reconsideration and to Amend the Court's February 18, 2004 Order, thus effectively DENYING the Motion for Attorney Fees.

FACTUAL AND PROCEDURAL HISTORY

On December 20, 1994, the plaintiffs¹ entered into a "Contract for Legal Services" with Gianola, Barnum, & Wigal, L.C., Patrick C. McGinley, and Robert J. Shostak (hereinafter GBW). GBW continued as counsel for the plaintiffs in this case until their services were terminated by the plaintiffs in 1998. GBW filed a motion to withdraw from the case on August 14, 1999 and this motion was granted by the Court on November 5, 1999. The plaintiffs then hired the law firm of Farmer, Cline, & Arnold. Thereafter, in 2000, the plaintiffs hired Allen, Guthrie, McHugh, & Thomas (AGMT) to represent them. Additionally, the plaintiffs had counsel previous to GBW and have appeared *pro se* at various times when they were between counsel.

While the plaintiffs were represented by AGMT, they reached a settlement on May 20, 2002. After the settlement was reached, the plaintiffs contested the existence of a settlement. On July 17, 2002, GBW filed a Petition for Quantum Meruit Attorneys Fees. GBW also filed a Notice of Attorney's Fees Lien on September 18, 2003. This Court subsequently found that a settlement occurred and therefore entered its February 18, 2004 Order Enforcing Settlement,

¹ The plaintiffs in this matter are Howard, Bonnie, Lucille, and David Trickett. David Trickett had proceeded through this case *pro se* until Bill Pennington entered a Notice of Appearance on his behalf on October 14, 2003. GBW seeks payment of attorneys fees based on its representation of Howard, Bonnie, and Lucille Trickett.

Releasing Defendants, and Dismissing Civil Actions. The February 18, 2004 Order allowed AGMT to disburse to itself attorneys fees and costs to which the Court deemed it was entitled. The Court also ordered the remaining funds, less a contested 1/5 potential interest of David Trickett, to be disbursed to Howard Trickett.

Sometime after the settlement agreement was reached, AGMT ceased its representation of the plaintiffs. On February 25, 2004, James M. Pool entered a Notice of Appearance on behalf of Howard, Bonnie, and Lucille Trickett. On February 25, 2005, Howard Trickett notified the Court that James Pool is no longer his attorney and that he would be seeking new counsel to represent him in this case. No new counsel has appeared. David Trickett continues to be represented by Bill Pennington. The ultimate issue presented by GBW's motions to the Court at this time is whether GBW is entitled to an attorneys' lien for attorneys' fees to be allotted from the proceeds of the settlement under either a contractual or quantum meruit theory.

DISCUSSION

I. Breach of Contract

GBW represented the plaintiffs until it filed a motion to withdraw on August 4, 1999, after being discharged by Howard Trickett. The motion to withdraw was granted by the Court on November 5, 1999. GBW argues that it is entitled to the attorneys' fees they accrued until their discharge under a contractual theory.

"It is well established that an attorney has a lien on the fruits of litigation to aid in the enforcement of demand for his fee by resort to the property or money he has recovered for his client." *Shaffer v. Charleston Area Medical Center*, 485 S.E.2d 12, 199 W.Va. 428 at 431 (1997). Liens are classified as either retaining liens or charging liens. "A retaining lien is the right of an attorney to retain possession of a client's documents, money, or other property which

comes into the hands of the attorney professionally, until a general balance due him for professional services is paid." *Id.* Of more relevance to the instant case is the charging lien. "A charging lien is the equitable right of an attorney to have fees and costs due him for services in a particular suit secured by the judgment or recovery in such suit, based on equitable consideration." *Id.*

GBW relies on W.Va. Code § 30-2-15 and argues that it specifically provides for an attorney's charging lien. It states:

An attorney shall be entitled for his services to such sums as he may contract for with the party for whom the service is rendered; and, in the absence of such contract, he may recover of such party what his services were reasonably worth.

First, the Court must carefully look at the language of the contract between GBW and Howard Trickett. Howard J. Trickett and other plaintiffs retained the services of GBW pursuant to "Contract for Legal Services" dated December 20, 1994. The contract provided that as consideration for representation by GBW, the attorneys would be compensated by a "lump sum payment of Thirty-three and One Third percent (33 1/3%) of all monies and things of value recovered in the claim by compromise, settlement, or verdict after suit." The contract further provided that: "If the Client terminates the Attorney, *the Client* agrees to pay the Attorney his accrued fees to date, as well as costs and expenses which have been incurred up to the time." (Emphasis added). AGMT is not a party to the contract and the language of the contract specifically provides that the plaintiffs are responsible for paying GBW any fees that they are owed by virtue of their legal representation in this matter.

The language of W.Va. Code § 30-2-15 also provides that an attorney "may recover of *such party* what his services were reasonably worth." (Emphasis added). Again, AGMT was not

a party to the contract entered into between GBW and the plaintiffs. The statutory section provides a remedy for attorneys in GBW's situation, but it specifically states that they may recover from the plaintiff and not AGMT.

West Virginia case law reveals "that typically an attorney's charging lien will be brought during the underlying civil action and against the client or former client." *Shaffer*, 485 S.E.2d 12, 199 W.Va. 428 at 431. "However, there are situations where a charging lien is brought against another attorney, who took over the underlying claim. This type of charging lien, against a subsequent attorney, is typically brought in a separate action against the attorney." *Id.*

The instant case is not similar to *Shaffer* where two attorneys had an oral fee sharing agreement, discontinued sharing office space, and the lawsuit between the two attorneys focused on whether one attorney had a charging lien against the other attorney based on their oral agreement, or in the alternative, a theory of quantum meruit. In the case at hand, GBW had a contract with the plaintiffs and the contract explicitly provides for recovery from *the Client*. Furthermore, the statutory language of W.Va. Code § 30-2-15 allows GBW to recover the reasonable value of their services from the party with whom he contracted. The "Contract for Legal Services" was between GBW and the plaintiffs and GBW cannot recover from AGMT, a non-party to the contract.

II. Quantum Meruit

GBW argues that, in the alternative, they are entitled to fees and costs from the proceeds of the settlement under a quantum meruit theory. A lawyer discharged by a client without cause can recover on either a contingent fee contract or on the theory of quantum meruit. *Kopelman and Associates, L.C. v. Collins*, 473 S.E.2d 910, 196 W.Va. 489 (1996). Recovery of attorneys' fees under quantum meruit is not limited to the number of hours expended in a case, but is

subject to a multi-factor analysis as set forth in *Kopelman*. *Shaffer*, 485 S.E.2d 12, 199 W.Va.

428 at 434. In syllabus point 2 of *Kopelman*, the Court stated:

“Although the amount of time spent by each respective firm is an important consideration in a contingency fee case *where lawyers employed by one firm leave that firm and take a client with them and no contract exists governing how the fees are to be divided*, a circuit court also must consider retrospectively upon the conclusion of the case: (1) the relative risks assumed by each firm; (2) the frequency and complexity of any difficulties encountered by each firm; (3) the proportion of funds invested and other contributions made by each firm; (4) the quality of representation; (5) the degree of skill needed to achieve success; (6) the result of each firm’s efforts; (7) the reason the client changed firms; (8) the viability of the claim at transfer; and (9) the amount of recovery realized.” (Emphasis added).

Shaffer, 485 S.E.2d 12, 199 W.Va. 428 at 434; citing Syl. Pt. 2, *Kopelman*, 473 S.E.2d 910, 196 W.Va. 489 (1996).

There was a valid written contract between GBW and the plaintiffs in this case. The contract expressly set forth GBW’s remedy if their services were terminated by the plaintiff. Even in the absence of such contract, the facts of this case are distinct from the situations envisioned in *Kopelman*. The present case does not involve a situation where a law firm or an association of lawyers agreed to take on a case, subsequently disassociated, and then disputed the method of which the fee should be split. There was never any joint representation by GBW and AGMT. Furthermore, GBW did not assert a claim to attorneys’ fees until after settlement had been reached which was almost three (3) years after their representation of the plaintiffs had ended. GBW ceased its representation of the plaintiffs on August 14, 1999. A settlement was reached on May 20, 2002 while the plaintiffs were represented by AGMT. Subsequent to the settlement, on July 17, 2002, GBW filed a Petition for Quantum Meruit Attorneys Fees. Over one year later, on September 18, 2003, GBW filed a Notice of Attorney’s Fees Lien.

GBW attempted to assert a right to a share of attorneys’ fees and costs in this matter by filing their Petition for Quantum Meruit Attorneys Fees and Notice of Attorney’s Fees Lien prior

to the Court entering its February 18, 2004 Order Enforcing Settlement, Releasing Defendants, and Dismissing Civil Actions. However, the written contract entered into by GBW and the plaintiffs sets forth GBW's legal remedy.

CONCLUSION

A valid contract existed between the plaintiffs and GBW, setting forth the remedies available to the parties in the event of a dispute. Specifically, the contract called for any payment of attorney's fees following the dissolution of the attorney-client relationship to be paid by the client, and as such, there is no basis for a recovery or sharing of such fees from funds received by plaintiffs' subsequent counsel. The Court therefor DENIES the Motion for Reconsideration and to Amend the Court's February 18, 2004 Order and DENIES the Motion for Attorney Fees.

The Circuit Clerk shall provide a copy of this Order to Gary Wigal, Esquire, William Pennington, Esquire, James M. Pool, Esquire, Robert Allen, Esquire and to Howard J. Trickett.

IT IS SO ORDERED.

ENTER: June 12, 2007

Robert B. Stone
The Honorable Robert B. Stone, Judge

ENTERED

June 12, 2007

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JEAN FRIEND, CLERK

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